

1-10-2008

Henderson v. Eclipse Traffic Control Appellant's Brief Dckt. 34526

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RAYMAJEAN HENDERSON,

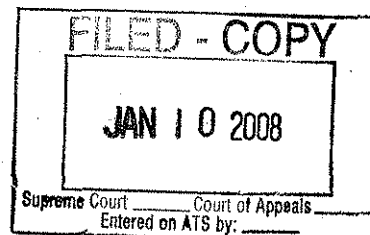
Claimant/Appellant,

vs.

ECLIPSE TRAFFIC CONTROL &
FLAGGING, INC., Employer, and
IDAHO DEPARTMENT OF
COMMERCE AND LABOR,

Respondents.

DOCKET NO. 34526



BRIEF OF APPELLANT HENDERSON

Appeal from the Industrial Commission
of the State of Idaho

Chairman James F. Kile, Presiding

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STATEMENT OF THE CASE

I. Nature of the Case

Raymajeane Henderson (Henderson) appeals from the sua sponte retroactive denial of unemployment benefits and the refusal, under the circumstances, to grant her a

waiver from the requirement that she repay the benefits. There is no claim of fraud or misrepresentation made against Henderson. She received the benefits in good faith while living out-of-state in an interstate benefit state, “job-attached” to a specific employer to whom she returned to work after seasonal lay-off. She not only fully complied with the interstate reporting requirements but she actively sought work although, as a ‘job-attached’ worker she was not required to do so.

The Idaho Department of Commerce & Labor (Department) and the Industrial Commission (Commission) held, over one year after her latest receipt of benefits, that she was not entitled to receive unemployment benefits during the time she was laid off and out-of-state. The Department and the Commission denied Henderson a “waiver” even though she was not accused of receiving benefits under false pretenses or misrepresentation, she was not advised of any eligibility questions when she changed her address at the local office of the Department, and answered the “interstate benefit payment plan” question 4c as instructed to by the local Department representative.

II. Course of Proceedings Below

Henderson applied for, and was approved to receive, unemployment benefits from December 12, 2004 through February 26, 2005; December 4, 2005 through April 1, 2006. Benefits were terminated retroactively by the local Department representative.

On February 13, 2007 Henderson contacted the local (St. Maries) Department office to inquire where her 1099 Form documenting her receipt of unemployment benefits during 2006 was at. Following that discussion one of the local Department representatives, after reviewing Henderson's file, on March 30, 2007, without notice and sua sponte, entered two separate retroactive decisions that purported to deny previously awarded, paid, and not appealed, benefits to Henderson for the periods of 12-12-04 through 2-26-05 and 12-04-05 through 4-1-06. The decisions were based on her being absent from the state. They were not based on any failure of Henderson to seek work or failure to keep in contact with her employer. Hr.T. p.11, L.1-6. Thereafter on April on April 2, 2007 the Department mailed Henderson a "Determination of Overpayment" demanding the return of the benefits paid to her during those stated time periods.

Henderson filed an appeal from the two retroactive denials on April 13, 2007. The appeal hearing, on both decisions was held, by telephone. There were two issues identified by the Appeals Examiner:

- 1). Whether the Claimant has failed to comply with the eligibility requirements of being able to work, available for suitable work and seeking work during any week(s) in question, according to section 72-1366(4) of the Idaho Employment Security Law;
- 2.). Whether the Claimant has received benefits to which she was not entitled, and if so, whether the requirement to repay benefits owed to the Employment Security Fund may be waived, according to section 72-1369(5) of the Idaho Employment Security Law.

On May 3, 2007 the Appeals Examiner entered Findings of Fact and Conclusions of Law and held (1) Claimant failed to comply with the personal eligibility requirement of being fully available for work, and (2) Claimant was ineligible for a waiver from the requirement that she repay the benefits she received.

Henderson, continuing to act pro se, filed a Motion for Reconsideration with the Commission. On July 26, 2007 the Commission denied the request. This Appeal was filed on August 27, 2007.

III. Statement of Facts

Henderson's employment was on a seasonal basis. She was laid off due every year due to lack of work during the winter months. The initial claim was filed, on June 16, 2004, but she went back to work. R p.2, L. 11-14. Henderson after being laid off for the season filed an 'Additional Claim' for unemployment insurance benefits on November 16, 2004, effective November 14, 2004. At the time of filing she indicated that she would be out of the state and would return to Idaho to this employer when recalled. Hr.T. p. 13, L. 5-7. She was classified by the Department as "job attached" to her employer. Her sole requirement for eligibility as "job attached" was to maintain once weekly contact with her employer until she was recalled to work. Subsequently, on December 7, 2004, prior to the payment of her first benefit, Henderson while personally

present at the St. Maries office of the Department, changed her address from St. Maries to Kailua Kona, Hawaii. This address change was taken and authorized by a staff member at the local Department office. Hr.T. p. 8, L.16-25, P. 9, L.1. Henderson at all times has remained a resident of the state of Idaho. Hr.T. p. 7, L. 18-20. Henderson filed a weekly claim report for each week beginning with the week 12-12-04 until 2-26-05. She was told by local Department staff, when reporting, to answer "No" to the question of whether she was out of her labor market area when she filed he weekly report.. Hr. T. p. 14, L.12-18, p. 18, L. 3-9. She received benefit checks in the amount of \$227.00. Each week Henderson reported that she had maintained contact with her employer as required. Hr.T. p. 9, L.21-25; p. 10, L. 1-25, p. 11, L.1. In June 2005 Henderson began working for Apex Construction, Inc. This job was also seasonal, closed during the winter months, and she was laid off due to lack of work. She then filed an 'Additional Claim' for unemployment benefits on November 14, 2005, wherein she indicated she would be out of the state and return to Idaho when she was recalled by her employer, which was approved. She was again classified as 'job attached' and only required to maintain regular contact with this employer. Henderson met this requirement, Hr.T. p. 12, L.5-9. She was told by local Department staff to answer "No" to the question of whether she was out of her labor market area. Hr. T. p. 14, L. 12-18, p. 18, L. 3-9. The decision made

in 2007 to retroactively deny her benefits for this period was not based on a failure to keep contact with her employer nor a failure to seek work. Hr. T. p. 12, L.5-10. On December 12, 2005, as done previously, she presented herself at the St. Maries local Department office and changed her addresss from St. Maries to Kailua Kona, Hawaii. This address change was authorized by a local Department staff member. Hr. T. p. 12 , L.10. She returned to St. Maries and her employer, Apex, when called to return to work and changed her address at the local Department to St. Maries in April 2006. During this benefit receipt period she received checks in the amount of \$325.00.

During the seasonal lay-off periods in question Henderson lived in Hawaii and actively looked for work there. She was not on a vacation. Exh 11 p. 2 of 4. She reported this to the local Department office every year, was approved for benefits every year, was never advised that she was doing anything inappropriate , and she was told how to fill out the weekly report, because that was where she was living at the time.

Each year when Henderson lived out-of-state during the seasonal lay-off she contacted the Hawaii Department of Employment, registered with them, contacted the 'interstate office,' registered with that job bank, and made work search contacts even though it was not required of her. Hr. T. p. 9, L. 23-25, p. 10, L. 1-2. Henderson was informed that the *state* of Hawaii would not hire her if she was 'employer attached.'

Hr.T. p. 18, L. 24-25, p. 19, L. 1-3. She did apply for jobs other than with the state, applying for "any kind of work." Hr. T. p. 29, L. 17-22. She maintained a record of her employer contacts and provided them, upon request, to the local Department office. Hr. T. p. 19, L. 8-11.

Henderson was a foreman for her 'attached employer' and talked to them almost every other day. If she had been needed, or requested to be back to work, should could have jumped on a plane and been there the next day. Hr. T. p. 14, L. 3-6. However, because of the nature of her work, on roads, this never occurred. Hr. T. p. 17, L. 19-23.

Henderson did originally receive a copy of the unemployment 'Claimant Handbook.' (See Appendix) The Handbook specifically provides that "If you are 'job attached' you must maintain contact with your employer and return as soon as work becomes available." (Handbook, p. 12) Whenever her 'attached employer' told her to come to work she has returned to the employer and gone to work. Hr. T. p. 17, L. 24-25, p. 18, L. 1-2. The Handbook also provides that an 'interstate claimant' will be asked if you were away from the area where you normally look for work, or the area you normally work in *or live in*, during any part of the week for which you are filing and if worker was, they are instructed to answer "Yes". (Handbook p. 12) Henderson was told by the local Department to answer that question "No" and she did so in the belief that it

was a correct answer because she was told to answer “No” and because she hadn’t left the area where she normally lived in at that time of year.

On February 13, 2007, when Henderson contacted the local Department to see where her 1099 was at for tax preparation purposes she spoke with a Department representative named Ackerman. There is somewhat of a disagreement over whether the two had spoken before in the testimony, but during that call Ackerman questioned Henderson about her job searches in Hawaii. Exh 4, 1 of 2. , Hr. T. p. 12, L. 13-19. Ackerman, who it turns out was the manager of the local Department office, determined that Henderson, while in Hawaii, had not been qualified to receive benefits under I.C. section 72-1366(4) because, *although she was not required to seek work but only remain in contact with her ‘attached employer’ once a week, she was “not available” for work.* Exh 4, p. 1 of 2. Ackerman testified, it was her interpretation that an ‘attached worker’ *must be immediately available for work at a literal moments notice* if the ‘attached employer’ contacted them and told her to be at work in order to be “available.” Hr. T. p.11, L. 14-20. On March 30, 2007, without further notice or discussion Ackerman entered two separate Decisions, that were consolidated in this matter for hearing. Both Decisions purported to retroactively deny the unemployment benefits previously awarded Henderson for the periods of 12-12-04 through 2-26-05 and 12-04-05 through 4-01-06.

4. Standard of Review

When considering an appeal from the Industrial Commission the Court is limited to reviewing questions of law. *Idaho Constitution Art. V, Sec. 9*. The Commission's findings of fact will be disturbed only where they are not supported by substantial and competent evidence. Substantial competent evidence is evidence that a reasonable mind might accept to support a conclusion. *Cox v. The Hollow Leg Pub and Brewery, 2007 Idaho (33173), ___ P.3d ___ (2007)*.

ARGUMENT

The Idaho Department of Commerce and Labor did not have jurisdiction, to enter its Decision of March 30, 2007, to re-open and reverse the Department's earlier Decisions of December 2004 and December 2005 awarding Henderson unemployment benefits, and requiring repayment.

The Commission adopted the Department's Appeals Examiners Findings of Fact. The Examiner found, and the hearing transcript contains no contrary evidence, that when Henderson applied for unemployment benefits in November 2004 and November 2005 and began to thereafter respectively receive the benefits, that she advised the Department that she would be out-of-state in Hawaii where she lived during seasonal lay-off. R p. 3, para. 9. The testimony of the Department representative, Ackerman, reflected that the address change from St. Maries to Hawaii was made by a Department staff member, Hr.

T. p. 9, L. 12-16, and that when Henderson filed for benefits she stated that she “would be returning to Idaho and returning to work for this employer.” Hr. T. p. 13, L. 2-7; p. 23, L. 23-25.

The Appeals Examiner also specifically found that the payment of benefits to Henderson, while she was out-of-state “was not the result of a false statement or misrepresentation” made by Henderson. The Commission also specifically notes in it’s ruling that “IDCL has not accused Claimant of receiving unemployment benefits under false pretenses.” R. p. 22, L. 8-9.

The Court has held that the “statutory requirements governing the right of appeal under the Employment Security Law are mandatory and jurisdictional.” *Welch v. Del Monte Corporation*, 128 Idaho 513, 516, 915 P.2d 1371 (1996). The Court further held that the Commission does not have express statutory authority to rescind a prior order that has become final and conclusive once the time for appeal has expired. Ib 515.

Pursuant to I.C. section 72-1368(3) a determination of eligibility is final unless an appeal is filed within 14 days after notice. Subsection (4) of this section provides that a “special redetermination” may be made within one (1) year if other facts pertinent to the determination become available or have been newly discovered. One year, unless there is a finding of non-disclosure or misrepresentation of act, is the maximum time period

during which the determination can be altered. In this case the maximum period for a sua sponte re-open and reversal of the decision awarding benefits in the initial benefit claim period would have been December, 2004, and the second maximum period would have been December 2005. Neither the Department nor the Commission had jurisdiction to enter it's respective Decisions and set aside the awarded benefits in either of the claim periods presently before the Court.

Argument

During the benefit periods in question Henderson met the eligibility requirements of I.C. section 72-1366 (4)(a) and (b).

The Department and the Commission in their respective Decisions, which proceed from conflicting perspectives and which results in the Commission effectively 'overruling' the decision of the Department but affirming the result on different grounds, arrive at a strict interpretation of I.C. 72-1366(4) because although differing they both limit their analysis to just subsection (a) thereof and make no mention of or discuss at all the second part, "and"(b) thereof. It is only by ignoring (b) that first the Department and

then the Commission could reach the conclusion that even an “employee attached” employee such as Henderson, who is admittedly not required to seek other work but must only contact their “attached employer” once a week, must nonetheless remain physically present in the same ‘area’ as her employer.

Had the Department or the Commission considered part (b), the “and” requirement for eligibility, the interpretation would have to be favorable to Henderson. The record is not disputed that Henderson, at all times relevant to her claims, was living in a state that is included in the interstate benefit payment plan and further had actually contacted and worked through that state’s Employment Department and the ‘interstate office.’ Hr. T. p. 21, L. 2-4

The two cases cited by the Commission for their holding that ‘job attached’/ ‘employer attached’ workers must not leave the labor market area where the “employer” is located when they are on seasonal lay-off are not factually similar. Indeed, significantly, there is no discussion of a similar requirement, in either of those respective states, of a requirement such as Idaho’s 72-1366(4)(b) requirement that the claimant live in a state that is included in the interstate benefit payment plan.

The *UAW v. California* case cited as 58 Cal. App.3d 924 (1976) cited by the Commission actually had to do with “who”, the worker or the state, had the burden of

proof that a job was available that the worker had to be available for. *Ib*, p. 930. In fact, at page 930 of the UAW case the California Court goes to great lengths to distinguish the UAW case from *In the Matter of Clarence Gosha, IB 931*. In *Gosha*, the Court noted with approval that the intent and ability of the worker to return to the 'attached employer' within 24 hours of notification of work certainly satisfies a reasonable availability requirement. In Henderson's situation it is uncontested that whenever her employer has told her to come to work when she was living in Hawaii that she has returned and gone to work. Hr. T. p. 17, L.19-25; p. 18, L. 1-2, and that she could literally jump on a plane and be back to the 'attached employer' in five hours. Hr. T. p. 14, L.4-5. That response time and the historical prompt and appropriate availability of Henderson upon being told to return to work is certainly reasonable and within the *Gosha* '24-hour' return to work time frame. Additionally, the UAW case is distinguishable because the "unavailability of the worker had nothing to do with the fact that he traveled interstate, or intrastate, but rather it hinged upon the *workers' failure to file their respective reports* with the Department as required. *Ib*.932.

The *Teague v. Florida Industrial Commission*, 104 So.2d 612, case relied upon by the Commission is likewise inapplicable. In *Teague*, not only did the *Claimant not seek out employment* while laid off, but he was *also not 'employer attached.'* Here,

Henderson was 'employer attached' and even though she was not required to even look for work (Hr. T. p. 23, L. 11-16) - the record is undisputed that she looked for work and made regular job applications. Hr. T. p. 19, L. 1-13.

The Commission, in one of it's departures from the Department decision, also based it's holding, on it's own finding of fact, that the claimant voluntarily relocated to another community in which there is no available employment and the claimant has no reasonable expectation of finding any, citing *Teague*. R. p. 20. The Commission found that "Claimant readily admitted that in Hawaii...that 'no employer' will hire a worker who is only living in the area for the winter. (Tape Recording)" R. p. 20, L. 9-11.

This finding of fact is not supported by any substantial competent evidence in the record and thus can not be a basis for it's decision. *Toland v. Schneider*, 94 Idaho 556, 494 P. 2d 154 (1972) As clearly reflected in the transcript, but perhaps misunderstood from just listening to the tape, the record reflects that it was not "no employer" in the state of Hawaii that would hire her, it was that "the state of Hawaii" had a rule that to get hired by the "state" one needed to be a permanent resident, Hr. T. p. 18, L. 24-25, and that rule for "state" hiring has just been changed. Hr. T. p. 19, L. 1. Henderson in fact actually applied for jobs with employers other than the "State Transportation Department." Hr. T. p. 21, L. 16-17. She applied for "any kind of work" but was refused

because she was 'employer attached'. She did not refuse work. Hr. T. p. 29, L. 12-22. The Department admits that for an employer to refuse to hire an 'employer attached' worker is reasonable employer conduct. Hr. Tr. p. 28, L. 13-14. Regardless, any issue of whether the state of Hawaii, or any other type of employer, would hire her should not be relevant to Henderson's right to benefits because she was 'employer attached' and she was not required under any scenario to seek other jobs or work and that was not why the benefits were retroactively denied. Hr. T. p. 23, L. 11-25; p. 24, L. 1-7. Indeed, as is discussed below, requiring 'employer attached' workers to seek new employment during a seasonal lay-off is not good public policy, especially for Idaho.

Argument

The Department of Commerce and Labor's adoption of, and the Commission's interpretation of IDAPA 09.01.30.175.04.23 to require seasonally laid off workers to remain within the labor market area where they lived while working for their 'job attached' employer is in excess of their statutory authority and contradicts the clear and unambiguous legislative expression of I.C. 72-1366(4) and (b).

The Department's adopted rule and the Commission's requirement that 'job attached' workers to remain in the labor market area in which the worker was living while working for the 'job attached' employer are not supported by the wording of 72-1366(4)(a) and (b). It does not require that nor can it even be inferred to require that.

Agency construction of a statute will not be followed by the Court if it contradicts the clear expression of the legislature. *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 851 P.2d 961 (1993). The Court will not enforce a regulation that is, in effect, a rewriting of a statute. *Moses v. Idaho State Tax Com'n*, 118, Idaho 676, 799 P. 2d 964, 968 (1990). When a statute and a regulation conflict the regulation must be set aside to the extent of the conflict. *Idaho Cty. Nurs. Home v. Dept. of Health*, 120 Idaho 933, 821 P.2d 988, 992 (1991).

If the statute in question consisted only of part (a) the Commission's interpretation could carry a flavor of validity. However subsection (b) exists, and it specifically provides for benefits so long as the worker resides in a state that is included in the interstate benefit plan. Henderson lives in Hawaii when on seasonal lay-off and it is undisputed in the record that Hawaii is a state included in the interstate benefit plan. The Commission, at page 5 of it's Decision, R. p. 20, does acknowledge, without mentioning, (b) by stating that, contrary to the wording of the IDAPA rule and the holding of the Department, that a worker can relocate to another community or labor market area. This is of course consistent with not only (b) but also the Claimant Handbook (See Appendix) that addresses 'interstate' claimaints who live outside Idaho (Handbook, p. 16) and who were away from the area where they normally look for work.

(Handbook, p. 12). In both instances benefits are clearly provided for.

The Commission attempts to support its denial of benefits to Henderson by entering its own finding of fact, beyond that which it adopted of the Appeals Examiner. It finds that Henderson moved to another community in which there is “no” available employment and has “no” reasonable expectation of finding any. R. p. 20. This “finding” is not supported by any substantial competent evidence. The record reflects that there are other jobs than state jobs available in Hawaii, not just state jobs, and that Henderson applied for them. Likewise, just because she was unsuccessful in obtaining work at one of the “any other jobs” she applied for does not mean that there she has “no” reasonable expectation of finding any. At most it means those that she applied at did not hire her. Indeed it is a classic ‘Catch-22’ type position to claim on the one hand that she was required to do job searches in Hawaii even though, as a matter of law, there she had no reasonable expectation of finding a job. This argument breaks down even further when it is recalled that Henderson is ‘job attached’ and that under the Department rules she is not even required to look for work with new or different employers, but rather she must only remain in contact, once a week, with her ‘job attached’ employer.

Regardless, even if the Court determines that the finding is supported, in the case of Henderson it is not relevant because a ‘job attached’ worker is not required to even

seek new or other employment. The difference in job seeking requirements between a person who is simply 'unemployed' and a person who is 'job attached' unemployed is expressly set forth at page 8 of the Claimant Handbook. An 'unemployed' person "must try to find full-time work each week in accordance with the work seeking requirements when you filed your claim." Whereas, a 'job attached' worker "must maintain contact with your employer and return as soon as work becomes available.

The testimony in the record regarding the requirements for a 'job attached' worker were comprehensive and clear.

Q. (Appeals Examiner to Ackerman) During this time, then from December 12, 2004 through February 26, 2005, what was the Claimant's work seeking requirements?

A. (Ackerman) She was—she was employer attached, meaning she was to maintain regular contact with her employer.

Q. Do you know if she did that?

A. Do I—well, based on her statements she maintains that she did.

Q. Okay. What does it mean as far as the department is concerned to maintain contact with your regular employer?

A. Each week they are asked that question, did you maintain regular contact, and it's asked each and every week of a claim and so it is the department's intention that you maintain regular contact each week as you testify—as you report on the tele claim.

Q. So, using that definition, then, if a claimant was going to be laid off for let's say a three month period of time, 12 weeks—

A. Uh-huh.

Q. —but they are considered to be job attached to this employer, then, each week they need to call their employer to see if there is work?

A. Correct. And understanding—I know some employers when they contact them, they will—you know, they may instruct to contact them in two weeks, but—and that's fine, but if—as far as the department's position is if they are maintaining—they are maintaining contact with their employer and to be eligible for benefits, that they have to contact their

employer on a weekly basis.

Q. All right. Your decision wasn't based on the fact that she didn't comply with her work seeking requirement, the decision is based on a finding that the claimant was not available for work?

A. Correct.

Hr. T. p. 9, L. 23-25; p. 10, L. 1-25; p.11, L. 1-6.

Q. (Appeals Examiner) Is there any disagreement that Mrs. Henderson was job attached to this employer and was in a layoff status during this period of time?

A. No. In fact, when Mrs. Henderson filed her claim she even indicated that she would be returning to Idaho and returning to work for this employer. (emphasis added)

Hr. T. p. 13, L. 2-7

It is the Department's position, which Henderson submits is completely unreasonable (especially based upon the Commission's reliance upon *UAW v. California*, supra., that clearly states that a report to work within 24 hours is entirely reasonable), and contrary to Idaho law that,

"It is reasonable to say that if an employer called you today or even the very next day and you're (sic not) in Idaho, you could not be available for work in an hour or even the very next day...and being in Hawaii exempts her from that availability. She was not available for work."

Hr. T. p. 11, L. 14-20.

Q. (Appeals Examiner) All right. And what law is it that you're referring to that requires the claimant to remain in their labor market area and be available for work, even if they are job attached?

A. Well, I know Section 72-1364-66, section 4, says that the claimant shall be eligible provided that during the whole of any week to which-with respect to which she claimants (sic claims) benefits, the claimant was able to work, available for work, and seeking work or *maintaining regular contact*. (emphasis added)

Q. Now, this is the same scenario, then, that's involved with the determination

in Exhibit No. 8, the time period of 12/4/2005 through April 1, 2006.

A. Correct.

Hr. T. p. 11, L. 21-25; p. 12, L. 1-8.

EXAMINER STEVENS: All right. Well, so both—in both her two series and her one series claims she was considered to be job attached to her employer?

MRS. ACKERMAN: Correct.

EXAMINER STEVENS: And had no work seeking requirement.

MRS. ACKERMAN: Correct.

EXAMINER STEVENS: All right.

THE WITNESS: (HENDERSON): I don't understand.

EXAMINER STEVENS: Well, I know you wouldn't understand...

MRS. ACKERMAN: And I want to say the reason she was coded is because she told staff that she was going to be returning to that same employer in Idaho at that time.

EXAMINER STEVENS: Which, in fact, she did; is that correct?

MRS. ACKERMAN: Correct.

EXAMINER STEVENS: All right. So, is there any—any problem on the Department's end that Mrs. Henderson was job attached during each of these claim years?

MRS. ACKERMAN: No.

(Emphasis added) Hr. T. p. 23, L. 11-25; p. 24, L. 1-7.

Not only does the Department representative, Ackerman, incorrectly state the provisions of I.C. 72-1366, as there is no “or maintaining regular contact” in the specific wording of the statute, but, based upon the Department's position regarding “maintaining regular contact” the record is undisputed that Henderson did comply. Ackerman did not even bother to contact the employer to verify or question the fact that Henderson

contacted the 'job attached' employer at least once a week, because to her it was an 'availability issue', which, under the Department's own interpretation is an "or" requirement with the maintaining contact requirement for a 'job attached' workers. It is almost as if the Department wants it both ways. You don't have to look for work if you are 'job attached' (even though that is not what the statute says) but you have to live at the place that you lived at while you worked seasonally, which is contrary to subsection (b) that states that the worker only need reside in an interstate benefit plan state, which Henderson did live in.

Henderson, when told to return to work by her 'attached employer' always did so.

Q. (Appeals Examiner) Now, how is it determined when you would return from Hawaii to begin work again?

A. (Henderson) They would call me and say that the breakup permits are done it looks like we are going to start back up...

Q. Has there ever been an occurrence while you have been in a layoff status that your employers called you in the middle of this layoff status and asked you to return for work?

A. No.

Q. Whenever your employer has called you and said we'd like you to come back for work you have returned and gone to work?

A. Yes. Yes.

Hr. T. p. 17, L. 10-25; p. 18, L. 1-2.

The 'job attached' status of Henderson and the Department's determination that such workers need only contact their 'attached employer' once a week and not seek a

new and different job is practical and good public policy. Seasonal work is common in Idaho, and in order for Idaho's employers to maintain a skilled labor force to meet their needs, Idaho's needs, it is legitimate public policy to not require 'job attached' employees to be out actively seeking new or different employers. Such activity would inevitably cause turmoil in the established ongoing Idaho seasonal employers who need skilled and qualified employees that can be counted on to return to their job post when called. Henderson, did return every time.

Indeed, it seems that the only reason that this issue even arose in regards to Henderson in the first place, was because the Department's own computerized system, by Ackerman's own admission, coded Henderson as an unemployed (not 'job attached') worker who was required to make two employer contacts per week, instead of the once weekly employer contact required of 'job attached' workers.

EXAMINER STEVENS: Mrs. Ackerman, I have reviewed the basis screens for which Mrs. Henderson's filed her series—her current series, her series one one or her series two claim. In each case it lists her work seeking requirements, she's coded as a B2 claimant all three years.

MRS. ACKERMAN: That's actually incorrect.

EXAMINER STEVENS: I was going to ask how—how would that be if she was not asked whether or not she did her work search requirements in the weekly claim reports.

MRS. ACKERMAN: Unfortunately, the way our system is set up on the current sequence she was coded as a B2. She was required to make two employer contacts each week. When we changed—when that was changed, it changes the profile shot, I guess—the screen shot of it for the one and two sequence. However, if you go to the VR

screen—and that's why I included those in the documentation—the question asked her did you maintain contact, because that indicates that she was, in fact, an employer attached.

Hr. T. p. 22, L. 16-25; p. 23, L. 1-2.

As a result, not only did Henderson comply with the 'job attached' requirement of at least one contact a week with the 'attached employer', but she also complied with the unemployed worker requirement of two job contacts per week requirement. Henderson even sent the actual records of the job contacts to Ackerman, at the local office of the Department. Hr. T. p. 19, L. 8-13.

In a final attempt to uphold the Department's Decision, albeit on different grounds, the Commission attempted to analogize Henderson to a worker who actively discourages a prospective employer in the labor market area she is living in by telling her job contact employer(s) that she would be returning to Idaho as soon as her employer recalled her. In a somewhat convoluted manner the Commission Decision suggests that the 'job attached' worker, necessary to Idaho's seasonal employment industries, who has no obligation to actively seek new or different work for valid public policy reasons, must if she does nonetheless seek to try employment during the seasonal layoff period lie to a prospective employer if she is asked if she intends to 'stay for a while'. R. p. 20, L. 14-23. The inherent conflict in such a position is highlighted by the Department's Ackerman's testimony, that employers—even employers in Hawaii, are justified in

wanting to make sure that a worker that they hire and then invest in training to do a job “their” way, is not going to leave the job in a couple of months.

MRS. HENDERSON: They want permanent—they want permanent people. When they put the time out to train you and drug test you, yes, they want permanent people.

MRS. ACKERMAN: Which is totally justifiable on the employer’s side,...

Hr. T. p. 28, L. 10-14.

This ‘employer perspective’ reflects the public policy supporting the requirement that ‘job attached’ employees are required to only contact their ‘attached employer’ once a week to be eligible to receive unemployment benefits.

Argument

The denial of Henderson’s request for a waiver of the demand that she repay the benefits that she received, because they were deemed to be “overpayments,” during the benefit periods in question was arbitrary and capricious.

First, it must be acknowledged that there was not an ‘overpayment’. There is no claim that the amount of benefits that Henderson received, after her respective claims were approved, was not the correct amount.

If the benefits paid to Henderson are deemed ‘overpayments’, both the Appeals Examiner/Department and the Commission are in agreement that the standard for granting a waiver of repayment applicable under the circumstances of this case is as set for in I.C. 72-1369(5)(a), to-wit, that the benefit payments were made solely as a result of

departmental error or inadvertence and made to a claimant who could not reasonably have expected to recognize the error. R. p. 4; p. 21.

Both the Department and the Commission are in further agreement in that the Commission adopted the Appeals Examiner's Findings of Fact, R. 17, that:

1. Henderson was 'job attached' seasonal worker and only required to maintain contact with her employer until told to come back to work. R. 2 para.1, 2.

2. Overpayment was not the result of a false statement or misrepresentation made by Henderson. R.p. 6, para 2.

3. That Henderson lived in Hawaii when on seasonal layoff and that she reported this fact to the local office every year and she was never advised that she was doing anything wrong.

4. Henderson should have been advised by the Department that her living out of the state could be a potential availability issue for her. R. p. 6

5. Henderson, in responding to a question on the interstate benefit computer program reported that she did not leave the area where she normally worked. R. p. 6, and p. 22.

4. That if needed Henderson talked with her 'attached employer' almost every other day and if needed she could get back to work in five hours. R. 3, para. 12.

Based upon these specific findings of fact the Hearing Examiner, somehow, concluded that "The Claimant must accept some of the responsibility herself."

R. p.6. Even more incredibly based upon these findings of fact the Hearing Examiner, despite previously finding that Henderson did not make a false statement or misrepresentation in her filings for benefits, held that Henderson failed to provide the "only possible correct response to that question"..."and the claimant's failure to so respond resulted, in part, to this overpayment." The question begs itself. If, Henderson

did not make a false statement or misrepresentation in her filings, “How can it be said that she did not answer a question ‘in the only possible correct’ manner?”

The Commission’s ruling is even more disconcerting, given the adopted findings of fact set forth above. It’s sole rationale is that

“We note that no one forced Claimant to seek unemployment benefits while she spent her winters in Hawaii. Claimant did so of her own free will. *Therefore, Claimant is entirely responsible for the information she provided when she sought those benefits.*” R. p. 22. (Emphasis added)

Henderson accepts full and complete responsibility for providing the information on the benefit reporting form in the manner that she did. . It is undisputed in the record that she reported the information *exactly the way that she was told to report it in the manner in which she did.* This is not the type of factual scenario presented in *Cox v. The Hollow leg Pub and Brewery*, supra., where Cox “opted to not take any steps to insure her answers were accurate.”

Henderson testified, and there is no evidence in the record to the contrary, that,

A. (Henderson) But, anyways, I always went in there. (the local Department office). I was so careful, because I didn’t—you know, I don’t want this to happen what’s happening now. I get laid off every year and I let them know my address, I ask is there any new rules, is there anything I should know and from the beginning punch it, are you available for work, are you seeking work and they gave me—you’re suppose to make two contacts.

Hr. T. p. 18, L. 16-22

The testimony and the record are undisputed that Henderson specifically asked “every season” how to answer the questions, “how to press those numbers,” because she didn’t want this to happen. They all knew where she went during the lay off season. Hr. T. p. 18, L. 7-10.

MRS. HENDERSON:...And I want to know why I wasn’t supposed to put, no, I’m not out of my normal area. I was told from the representative in the office when I punch in my questions on the phone—no, I’(m) here now, I’m residing here, and no, I’m not out of my area.

Hr. T. p. 14, L. 14-18

Q. (Examiner Stevens) Now, you indicated in a previous statement that you had been told by someone in the local office that you should not report that you were out of your labor market area; is that what I understood?

A. Well, yeah, I said, you know, when I are press those numbers, when we go through it every season, I’m very careful, because I don’t want this to happen. I mean they all know where we go...

Hr. T. p. 18, L. 3-10.

Indeed, given this undisputed testimony, and the fact that the Findings of Fact that specifically provide that the ‘overpayment’ was *not the result of a false statement or misrepresentation made by Henderson* it is inconceivable how it can even be suggested that she was partially at fault for answering questions exactly the way that she was told to answer them, and in a truthful manner with no misrepresentation.

Contrary, to the Decision of the Department and the Commission, based upon the

specific Findings of Fact, and the undisputed testimony, the only conclusion that can be reached is that the payments, if indeed 'overpayments' were made to Henderson, *that they were made to her solely as a result of departmental error or inadvertence and that she had no way of knowing that she was receiving benefits to which she was not entitled.* The decision of the Commission is arbitrary and capricious and not supported by substantial competent evidence.

Indeed, given the findings of fact and the undisputed testimony, if there is some conceivable way that Henderson had some way of knowing that she was receiving benefits to which she was not entitled to receive, the Department is equitably estopped from asserting such a position. The doctrine of equitable estoppel requires that Henderson must have relied on the conduct of the Department and that she, as a result thereof, made a prejudicial change of position based on it's conduct. There is no question in the record before the Court that Henderson relied completely upon the advice and information provided to her by the Department, year after year, changed her position by accepting the benefits to which she believed, and believes that she is entitled to receive under the law as a 'job attached' employee, and that she ended up in this position by relying totally upon the action, inactions, and statements of the Department. *See Knight v. Department of Ins., 124 Idaho 337, 862 P.2d 337 (Idaho App. 1993).*

Argument

Henderson is entitled to attorney fees and costs incurred in this Appeal pursuant to I.C. 12-117(1). This Appeal was made necessary as a result of groundless and arbitrary agency action.

This appeal was only made necessary as a result of the sua sponte entry of a Decision that sought, over two years after the fact, to retroactively overturn a Decision of the Department awarding Henderson unemployment benefits. A close reading of the Decision, the Appeals Examiner's Decision, and then ultimately the Decision of the Commission, even after reconsideration, were all based on different and varying grounds and interpretations of a clear law and a clearly written Claimant Handbook that at no time reflect that a 'job attached' worker can not live in an area different from where she lived while working for the 'attached employer.' The decisions all quite literally come down to the fact, as pointed out by the Commission, that this 'job attached' employee, of her own free will, spent her winters in Hawaii, rather than continuing to live in St. Maries, with no work under five feet of snow, no likelihood of work, no history of ever being called back to work abruptly by her 'attached employer,' *and not even a requirement that had she stayed in St. Maries that she even look for new or different work.*

The sua sponte action of the Department in retroactively attempting to re-open and

reverse a years old decision on eligibility without the presence of fraud or misrepresentation on the part of Henderson and the refusal, given the clear Findings of Fact, to grant a Waiver, reflect that this matter was pursued by the Department without a reasonable basis in fact or law. Henderson is entitled to an award of attorneys fees incurred on this appeal, to protect her rights and interests, pursuant to I.C. 12-117(1). See Roe v. Harris, 128 Idaho 569, 572, 917 P.2d 403 (1996).

CONCLUSION

The Court should reverse the Decision of the Industrial Commission and award Henderson her costs and attorneys fees incurred in this appeal.

RESPECTFULLY SUBMITTED, this 8 day of January, 2008.

15/ STARR KELSO
Starr Kelso, Attorney for Appellant Henderson

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of January, 2008, I caused to be served two true and correct copies of the foregoing by First Class Postage via the United States Post Office to

Tracey K. Rolfsen
Deputy Attorney General
Idaho Department of Commerce and Labor
317 Main Street
Boise, Idaho 83735

15/ STARR KELSO
Starr Kelso

Claimant Handbook

A Claimant's Guide to the Requirements of the Idaho Employment Security Law

IMPORTANT

Read this book carefully or have someone read it to you. Remember, **you must read and understand** this handbook. A Spanish version of this handbook is available upon request.

¡IMPORTANTE!

Lea este manual con cuidado o consiga alguien quien se lo lea o interprete. Recuerde, que **usted debe leer y entender este manual**. Una versión en español de este manual está disponible.

This handbook is for quick reference and should not be used as an official document. The official citation of the Employment Security Law is found in Title 72, Chapter 13 of the Idaho Code.

Note: This handbook is intended for guidance only and should not be a substitute for specific legal advice. If legal advice is required, an attorney should be consulted.

THERE'S A NEW GAME IN TOWN!

Idaho Plays Hardball with Unemployment Insurance Fraud

People who defraud Idaho's unemployment insurance system will now face stiffer penalties!

Effective July 1, individuals who defraud Idaho's unemployment insurance system will repay the entire amount in addition to penalties ranging from 25 percent for first-time offenders to 100 percent for third-time offenders, and they will have to wait a minimum of 52 weeks and repay fraudulently received benefits in full before obtaining future benefits.

Accurately represent your ability, availability and work search efforts while receiving benefits.

Fully and accurately report any weekly earnings you receive while drawing benefits.

Always report quitting, losing or refusing any job.

Discontinue applying to receive benefits after returning to full-time work.

Don't use someone else's identity to receive benefits.

Don't try to collect benefits while on vacation.

Don't help someone else file a fraudulent claim.

For more information, see pages 19-21.

Your Unemployment Insurance Handbook is divided into sections. Each section answers questions or provides information about the Unemployment Insurance program. The types of questions answered or information provided in each section are listed below:

- | | |
|-------|--|
| 5 | What is unemployment insurance?
Who pays for it?
What can I do if I feel there has been discrimination?
Will my claim be audited? |
| 6-7 | Do I really have to know and understand the information in this book?
Was unemployment insurance taken out of my paycheck?
Are my benefits taxable? Can I withhold taxes?
Can child support payments be deducted from my check?
If I am disqualified, which wages can be used to requalify?
Can I cancel my claim?
Do I have to report my earnings if I work in another state?
If I am traveling, how do I report?
Do I have to look for work while traveling?
What if I run out of money before my claim year is up?
Do I have to seek work if I'm returning to my regular job?
Can Idaho Commerce & Labor give out information on my claim?
Can you help me find a job?
Can I use a calling card to call the Tel-A-Claim system?
What is a waiting week? |
| 8 | What are the personal eligibility requirements?
What is a base period?
How much will I get and for how long?
What if my monetary determination is wrong? |
| 9 | What can cause problems?
What are the penalties? |
| 10-15 | The Tel-A-Claim and Internet processes.
Where, when and how do I call?
What if I make a mistake?
Keep your PIN secret!
What if I forget to file one week?
Other information you can obtain. |
| 16 | Filling out your claim form.
When to return your claim form. |
| 17-18 | What if I work while on unemployment?
How much is taken from my benefit check if I work?
How do I report my earnings?
What if I earn money on the side? |

- 18 How do I get a check?
 What if my check hasn't come yet?
 What if my check is lost or stolen?
 What does the informational area on the check mean?
- 19-21 What is an overpayment?
 How will I know if I am overpaid?
 Do I have to pay the money back or can it be waived?
 How do you know when a claimant is cheating?
 What are the penalties for fraud?
- 22 What if I disagree with the decision?
 How long do I have to file a protest?
 Should I continue to file my reports?
 Who will make the decisions on my eligibility?
 Will I have to hire an attorney?
- 22 How do I get my claim going again?
 What if I move out of state?
 Why and how do I tell you I moved?
- 23 What is worker profiling?
 How do I get my 1099-G form for taxes?
 What is TAA/TRA?
 Reemployment and retraining for dislocated workers.
- 24-25 Document work search.
- 26 If you need to mail or call, the information is here.
 TDD phone number for Tel-A-Claim inquires.
 We're on the Internet at cl.idaho.gov/iw.

**To file for a week of benefits, open a new claim or reopen an existing claim
via the Internet, go to: cl.idaho.gov/iw**

The TEL-A-CLAIM phone number is: **1 (208) 334-4700**

In the Boise dialing area call: **334-4700**

Outside the Boise dialing area, call your local office and enter: **Option 7**

Unemployment insurance provides financial assistance to workers unemployed through no fault of their own. In Idaho, workers do not pay any part of the cost of unemployment insurance. Unemployment insurance benefits are funded through a tax on employers, which is collected by Idaho Commerce & Labor and placed in a federal trust fund. Money from that fund can be used for unemployment benefits and for no other purpose.

Idaho Commerce & Labor is an equal opportunity employer. Auxiliary aids are available for any of the programs offered and are available upon request. If you feel you have been discriminated against in any agency policy or practice, you may file a complaint with the local office manager or the state's Equal Opportunity Officer at Idaho Commerce & Labor, 317 W. Main St., Boise, Idaho, 83735; or the U.S. Department of Labor, Directorate of Civil Rights, 200 Constitution Avenue NW, Washington, DC 20210. All complaints must be filed within 180 days of the alleged discrimination.

The information you and your employer provide to Idaho Commerce & Labor may be requested and utilized by other government agencies with which we have information disclosure agreements. Precautions will be taken by such agencies to protect the confidentiality of the information.

Each claim is subject to review by unemployment insurance claim auditors. This is an in-depth audit covering wages earned during your base period, the circumstances of your separation, your work search and earnings on claim reports. Routine audits of claims are conducted to ensure that the information reported is accurate.

Yes. Failing to understand this information does not protect you from a possible denial. If you do not understand something or have a question about any of the information in this handbook, contact your local office. Your neighbors and friends may not have the right answers.

No. Nothing comes out of your paycheck to support unemployment insurance. Your employer pays for the entire program.

Yes. Benefits are fully taxable income. You may elect to have federal taxes withheld at the rate of 10 percent from your unemployment insurance benefits. Idaho state taxes are not withheld. We will mail a statement (Form 1099-G) to your last known address showing the total amount of benefits you were paid the previous year. The statement is mailed to you and to the Internal Revenue Service by the end of January each year. You may also obtain this information online at cl.idaho.gov/iw. If you do not receive your statement by the second week of February and do not have Internet access, contact your local office. Benefits paid on Interstate claims will be reported by the paying state. If you have questions about your taxes, contact the IRS or a tax consultant.

Yes. If you owe child support payments, Health and Welfare has the right (through court order or agreement with you) to deduct a percentage from your benefit check. (See page 23 for additional information.)

You may cancel your claim at anytime by submitting a written request provided: 1) you did not misrepresent or fail to report a material fact in making the claim and 2) you agree to repay any benefits received. Ask us if you have questions about cancellations. Your claim is not canceled when you stop reporting.

Yes. No matter where you are working, you **MUST** report your gross earnings while claiming benefits. We compare our records with employer records. We check Idaho payroll tax records as well as payroll tax records from other states.

You may still call Tel-A-Claim or file your weekly claim online at cl.idaho.gov/iw. You should remember that if you are not in your local labor market area, you must answer question _____ or question _____ as "YES." No payment for this week will be made until you provide additional information on your being out of the area. If you are using the Continued Claim Report form, mail it to your local office. Addresses are listed on page 26. If you do not have a Continued Claim Report form, contact a local office for assistance.

If you are seeking work out of town, you must keep track of where you looked for work. You may be asked to provide the names and addresses of where you looked for work while you were out of town. We may also contact these employers to verify your work search. We cannot pay you for any week you are on vacation. **Remember, if you leave town**, even if you are on a temporary layoff, the primary purpose of your trip must be to look for work. You must be willing to accept a job in these other areas.

Once you have qualified for benefits, you have a year, 52 weeks, to collect them. Unfortunately, you cannot file another Idaho claim until that existing benefit year is over. If you have worked in another state during the past two years, you may qualify for benefits from the other state. Your local office can help you. Sometimes when unemployment is very high, extended benefits may be available. You will be notified if extended benefits become available.

It depends on how long you expect to be laid off, how long you have worked for that employer and how many jobs are open in your area. You must look for work unless you are instructed not to.

We have very strict rules about releasing information. Certain state and federal agencies can get information but only what they need to do their job. The department may be required by law to share all claim information with each interested party. Former employers may be an interested party. We will not give information to your friends, family or anyone else unless you give us written permission to do so.

Yes. Every local Idaho Commerce & Labor office has a job placement service to help you find a job in your area. They also have a listing of jobs throughout the state and nation. Ask your local Idaho Commerce & Labor consultant about job skill testing, how to look for work, how to write a resume and available training programs. You may check available jobs by going online at cl.idaho.gov/iw.

Yes, however, we have found that some calling cards do not work with Tel-A-Claim. This is because the phone call goes over the network of the company through which the calling card was purchased, and sometimes that system uses the # key to denote end of call, start of another call and other options. So, when you depress the # key after entering wages, the calling card network intercepts this signal first and disconnects the Tel-A-Claim call in progress. Before purchasing a calling card for use with Tel-A-Claim, please check with the company to make sure that the # key will work as expected during a Tel-A-Claim call. **The preferred method for filing your weekly claim is via the Internet through our Web site: cl.idaho.gov/iw.**

After you establish your claim for unemployment insurance benefits, the first week you file a weekly report and meet all the eligibility requirements will be considered your WAITING WEEK. You will not be paid for the waiting week, but you must file a weekly report to get credit for the waiting week. If you earn more than 1 ½ times your weekly benefit amount in any week, then that week does not qualify as a waiting week, nor does it qualify for a benefit payment. If this happens, the next week reported on your claim that meets all eligibility requirements will be counted as your waiting week. You serve only one waiting week per benefit year.

Yes. Although you will not receive payment for weeks claimed until your eligibility has been established, you must make a timely report for each week for which you are requesting payment. If you are found eligible, you will be paid for the weeks claimed after the eligibility determination has been processed.

If you lose your job and unemployment benefits are denied because you were separated for cause or because you refused another job, you must build a new earnings record to qualify for benefits in the future, and usually self-employment can be used to requalify. You must provide proof of the income earned from self-employment. During Extended Benefits, the wages used to requalify from a benefit denial must be earned in an employer-employee relationship.

Like other types of insurance, the unemployment insurance program requires that you meet certain conditions before qualifying to receive payment. To qualify, you must meet both **personal** and **monetary** eligibility requirements.

Each week you claim, you must do certain things to receive a check. You must be **ready, willing and able** to take any offer of suitable work. To be eligible, you must be:

You must be physically able to work full-time. Tell your local office if you cannot work because of illness, injury or some other physical or mental condition. Most health problems will not affect your claim as long as you are looking for the type of full-time work you can do. You may be disqualified if you have to refuse work due to illness.

You must be ready to go to work. You cannot place unrealistic personal restrictions on such things as the hours you will work, the pay you will accept, locations you prefer to work and jobs you will take. You must be willing and able to accept both full-time and part-time work in jobs you can do during all the usual hours and days these jobs are done. Limiting shifts, days or distance you will travel to work can make you ineligible. Availability for work is **VERY IMPORTANT**. For example, you must have childcare arranged, a way to get to work and no other personal commitments that prevent you from accepting a job.

You must try to find full-time work each week in accordance with the work-seeking requirements you received when you filed your claim. This applies even if you are working part time. You must be willing to accept part-time work while waiting for full-time work to become available. **Actively seeking work** means you must personally contact employers who hire people with your job skills. If you cannot find your normal kind of work, you must look for any other kind of work you can do. You must expand your work search and avoid re-contacting the same employer every week. As your period of unemployment lengthens you may be required to look for another kind of work, accept a lower pay or search in other locations for a job. The local office can help you find work. Ask us how or go online at cl.idaho.gov and click on "Find Jobs".

You **MUST** keep a personal record of your job contacts. This must include the employer name, address, phone number, person contacted, date of contact and the results of the job contact. We may ask you to provide your work search record (in person or online) to verify your contacts. Keep looking for work as long as you are unemployed.

If Idaho Commerce & Labor offers you a job referral to suitable work, you may be denied benefits if you refuse to accept the referral or fail to make contact with the employer.

If you are job attached, you must maintain contact with your employer and return as soon as work becomes available. If you have not been required to make work search contacts because you have a date to return to work or you obtain work through a union, you must notify your local office if these conditions no longer apply.

You must have been laid off due to lack of work, voluntarily quit with good cause connected with the employment or been discharged but not for misconduct. If your reason for separation is other than lack of work, a written determination regarding your eligibility will be issued to you.

Shortly after your new claim is filed, you will receive a statement in the mail called a **Monetary Determination**. This statement shows:

The wages paid to you by employers who have contributed to the unemployment insurance fund during your base period (the first four of the last five completed quarters before the beginning of your claim) and the total amount you were paid in each quarter. If these wages qualify you for benefits, that statement will also show your weekly benefit amount and your total benefit amount. Your **WEEKLY BENEFIT AMOUNT** is the full amount you may receive for one week of unemployment. Your **TOTAL BENEFIT AMOUNT** is the maximum amount you may collect during the 52 weeks of your claim. If you are eligible for benefits, your first check should arrive by mail three to four weeks after you have filed your claim.

You should immediately notify your local office if any of your wages are not shown, are not shown in the right quarter or if wages are listed which you did not earn. Gather your check stubs, W-2 statements, pay slips or other documentation and ask for a **MONETARY REDETERMINATION**. **Important Note:** Continue to file on your claim while waiting for your monetary redetermination. Any benefits you receive based on an incorrect monetary determination are subject to repayment.

You left work without good cause connected with your employment, were discharged for work-related misconduct or refused suitable work or a referral to suitable work.

You return to work and earn at least 14 times your weekly benefit amount and become unemployed again through no fault of your own.

You are not able to work, are not available for work or are not actively seeking full-time work.

You are able to be easily reached for referral to jobs, and you are willing to work part-time while you continue to look for full-time work. You must have adequate transportation, and have personal circumstances arranged so nothing will prevent your accepting suitable work. You must not place undue restrictions on your availability for work, such as demanding higher pay than is normal for the area. This is a week-to-week denial. It ends when you notify Idaho Commerce & Labor staff you are again able to work, available for work and actively seeking work.

You are self-employed as your principal occupation.

Your principal occupation is no longer self-employment.

You are unemployed due to a strike in which you are actively involved.

Your unemployment is no longer due to a strike.

You fail to contact an Idaho Commerce & Labor office when directed to do so.

You are denied for each week you fail to contact the office. You may requalify for subsequent weeks if you contact the office and take care of the issues causing the denial.

You fail to participate in claimant profiling or re-employment assistance as required.

You are denied for each week you fail to participate in a planned profiling or re-employment event. You may requalify for subsequent weeks if you report as directed.

You make false statements or withhold information in order to obtain benefits.

You must repay any overpayment, and you will be disqualified from benefits for 52 weeks and until the resulting overpayment, penalty and interest are completely repaid to Idaho Commerce & Labor.

You fail to look for work or fail to provide us with a record of your work search when requested to do so.

You are denied benefits for each week you fail to meet your work seeking requirements or fail to provide us with your work search record. You may requalify for subsequent weeks by resuming a legitimate work search or providing the requested work search record.

You are employed by an educational institution and are between terms, school years or during holiday breaks.

Wages earned as a school employee cannot be used if you have reasonable assurance of returning to work when school resumes.

You are an alien and are not legally permitted to work in the United States.

You cannot be paid benefits if you do not have legal authorization to work in the United States, or wages in your base period were earned when you were not legally authorized to work in the United States.

Three methods exist to file and receive benefits. **The preferred and quicker method is the Internet Continued Claims system (cl.idaho.gov/iw).** You file weekly using your computer or by coming into a Commerce & Labor office and use one of our lobby machines. This easy, fast and convenient system uses no paper, and you get paid once a week. No postage is involved. You will have to pay long-distance charges if you reside outside the Boise calling area and choose the telephone reporting method. Calls can be made during the "off hours" and only last a few minutes. The other filing method, the continued claim report system is described on page 16.

If you already established a PIN for IdahoWorks, you will enter that same PIN for the Internet Continued Claims or the Tel-A-Claim systems.

If you have received services in the past and are in IdahoWorks, but have not established a PIN for using IdahoWorks, you must create a PIN in order to access the Internet Continued Claims or Tel-A-Claim systems. To establish a PIN, you must enter the month and year of your birth as your temporary PIN. For example, if you were born on 4-6-1958, your PIN would be 0458. Next, you will be instructed to enter the temporary PIN again and then to select a permanent four-digit PIN that you will enter twice. You will then use the permanent PIN you have created each time you access the Internet Continued Claim or Tel-A-Claim systems. Your PIN serves as your signature. You are responsible for all transactions using your PIN. **DO NOT SHARE YOUR PIN OR KEEP IT WRITTEN WHERE OTHERS MAY FIND IT!** You will be held responsible for benefits fraudulently claimed under your PIN. If you forget your PIN, contact your local office where a consultant will reset your PIN. Office telephone numbers are listed on page 26. **IMPORTANT NOTE:** Remember your PIN. No one at Idaho Commerce & Labor will know your permanent PIN.

To use the Internet Continued Claims system, you will need access to a computer and the internet. Before using the Internet Continued Claims system, you should carefully read and understand how to file a claim using the Tel-A-Claim system. The questions you will answer on the Internet Continued Claims system will be the same questions that are asked on the Tel-A-Claim system. **To access Internet Continued Claims, log on to: cl.idaho.gov/iw** and follow the step-by-step instructions for filing an Internet Continued Claim. When responding to the questions on the Internet Continued Claims system, you may change any responses given before submitting your claim. Once you have submitted your claim, your responses cannot be changed. If you need to change a response after submitting your Internet Continued Claims report, you must contact your local office. If you have questions regarding the Internet Continued Claims system, please contact your local office. The phone number is on page 26.

: To use Tel-A-Claim, you need to use a touch-tone phone. Rotary and pulse-dial phones will not work. Many phones are equipped with a switch that changes the phone function from pulse-dial to touch-tone. Cell phones will work with the Tel-A-Claim system.

Call Tel-A-Claim at 1 (208) 334-4700. If you live outside the Boise dialing area, call your local office and select option 7 from the automated menu. Local office numbers are listed on page 26 of this handbook. If you live in the Boise dialing area, call 334-4700. TTY claimants may call Idaho Relay Service by dialing 711 and then providing the phone number to Tel-A-Claim.

A benefit week begins at 12:01 a.m. on Sunday, and ends at 12:00 midnight the following Saturday. You have seven full days following the Saturday week ending date to make your call to Tel-A-Claim or to file online.

Example:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 (Start of week)	2	3	4	5	6	7 (Weekending date.)
8 (Call between 12:01 a.m. Mtn. time this day and	9	10	11	12	13	14 ...midnight of this day. Mtn Time.)

For example, let's say your first week runs from the 1st through the 7th. You would call Tel-A-Claim or file online during the week of the 8th through the 14th. The earlier you file, the earlier your claim is processed. **In order to have your claim processed on the same business day you call, you must complete the Tel-A-Claim or online process before 6 p.m. Mountain Time.** If you call or file after that time, your claim will be processed the next day. Claims made on weekends are processed the first working day of the following week.

To use the Tel-A-Claim system for payment or inquiry, you must use a Personal Identification Number or PIN.

Tel-A-Claim is available in English and Spanish, and it will ask you first to choose which language you want. The system will present you with menu choices. To file for a week, choose option 1. Next, Tel-A-Claim will ask for your social security number. You enter the number using the numbers on your telephone keypad. The system will repeat the number back to you and ask you to verify your entry. Tel-A-Claim will then ask for your PIN. After entering your PIN, the system will repeat it and then ask you to verify it. The system will now tell you that you are filing for a specific week and give you the week ending date.

Tel-A-Claim now gives you this message: "By using this system, you agree to have your answers become part of your claim record. You are certifying that your answers are true and accurate to the best of your knowledge. Under Idaho law, you could be penalized for giving false answers or for withholding information." Please stay on the line until all questions are answered and verified. **If you hang up before the system tells you that your report is complete, your answers will not be recorded, no week will be claimed and you will have to call again. Please wait for the system to tell you good-bye before you hang up.**

Tel-A-Claim now asks you the eligibility questions that you must answer for each week. To answer the questions, **press 1 for YES, 9 for NO or 0 to REPEAT the question.** A short explanation of each question or set of questions is given here to help you understand the eligibility requirements for receiving unemployment insurance benefits. Questions 1-6 ask if you were able to work, available for work and actively seeking work, as required. To be eligible for benefits, a claimant must be able to work, available for work and actively seeking work. The number of job contacts you must make each week was given to you at the time you filed for your benefits. If you are not sure of the number of job contacts you must make per week, contact the local office where you filed. The telephone numbers are listed on page 26.

If you were not able to work, you must answer "No" to this question. If you answer "No" to this question, we will require you to give us additional information so a decision can be made on your eligibility for this week. At the end of the Tel-A-Claim process, you will be instructed to contact your local office to provide additional information.

If you are not available for work, you must answer "No" to this question. If you answer "No" to this question, we will require you to give us additional information so a decision can be made on your eligibility for this week. At the end of the Tel-A-Claim process, you will be instructed to contact your local office to provide additional information.

You must seek work as you were instructed to by your local office. If you did not make the required number of job contacts, you must answer "No" to this question, and additional information will be needed to make a decision on your eligibility for benefits for this week.

If you are employer-attached or union-attached, your work-seeking question will be:

A job-attached claimant must remain in contact with his or her employer and be available for suitable work for each week that he or she files. A union-attached claimant must remain in contact with his or her union. If you are no longer employer-attached or union-attached, contact your local office to update your work-seeking requirements.

See 4c.

Or if you are job-attached, the question will be:

See 4c.

Interstate claimants will be asked:

You must remain fully available for work. If you were away from the area where you normally look for work, or the area you normally work in or live in, during any part of the week for which you are filing, you must answer "Yes" to this question. If you answer "Yes" at the end of the Tel-A-Claim process, you will be instructed to contact your local office to provide additional information.

If you were offered a job and had to turn it down, or if you were scheduled to work and for some reason did not work, you must answer "Yes" to this question. If you answer "Yes" at the end of the Tel-A-Claim process, you will be instructed to contact your local office to provide additional information.

Any week that you attend schooling or training, you must answer "Yes" to this question. If you are attending school or training and have not previously reported it, you will be advised to contact your local office to provide additional information. If you have already reported the schooling to your local office, you will not need to provide any additional information. Tel-A-Claim will let you know if additional information is needed.

The system will now repeat your answers to questions 1-6, in order to confirm that your answers are recorded accurately. If they are all correct, you will press 1. If there is an error, press 9 and the questions will be repeated. If you repeat the questions, you must answer all the questions as they are repeated.

Asks you to report any earnings from regular employment and any separations that may have occurred from this employment. Income from employment must be reported in the week it is earned. Please refer to page 17 to review how to report earnings. **Report all earnings.** Include all **gross wages** for any work you perform during any week you claim benefits. This can include cash payment, commission sales, tips and gratuities, working to pay off bills, National Guard or Reserve drill pay and reasonable cash value of room and board, groceries, clothes or any other valuable consideration.

If you are not able to determine the exact amount you earned, you must estimate weekly earnings as closely as possible. If you do estimate your earnings, you must contact your local office when you receive the correct earnings information. Misreported or under reported earnings will be found in an audit weeks or months later and may result in severe criminal, civil and administrative penalties.

If you find yourself in a situation where you are working and not receiving pay for the hours worked, contact your local office for instructions on how to report. All hours worked must be reported, even if compensation is not expected. Refer to page 17 for the definition of work.

If you make a mistake on the following questions, you will only be able to change the dollar amounts which you enter. If you make an error answering the yes/no part, you will have to contact your local office to make the correction.

If you answer "Yes," indicating you worked for an employer, the question continues:

If you earned \$188.98 before any deductions, you would enter the following on your telephone key pad:
18898#

If you earned \$100.00 before any deductions, you would enter the following:
10000#

The system speaks back the amount you entered and asks you to confirm it by entering 1 for yes or 9 for no. Remember, your gross earnings must be reported as earned. Please see pages 17-18 for an explanation of how earnings may reduce your weekly benefit amount.

If you are employed full-time during the week, you will not receive any benefits, regardless of the amount you earned. In general, 40 hours per week is considered full-time employment with a few exceptions. If you have any questions regarding whether your work was full-time, contact your local office.

If you have separated from a job during the week for other than "lack of work," then you need to answer "Yes" to either question 7d or 7e. Any separation from an employer, except for lack of work, must be investigated to see if you still meet the eligibility requirements for unemployment insurance. **If you do answer "Yes" to question 7d or 7e, you must contact your local office.** If you have any question in your mind regarding what type of separation occurred from your job, contact the local office.

You are considered self-employed when you are engaged in an independently established trade or occupation and are not controlled or directed by an employer in the performance of your work. Earnings are considered to be your gross income, unless you provide evidence of expenses which are absolutely required to perform your work and not common to expenses while working for an employer.

If you answer "Yes," indicating that you were self-employed, the message continues as follows:

If you earned \$175.35 in self-employment, press:
If you did not earn any type of pay, press:

17535#
0#

The system speaks back the amount you entered and asks you to confirm it by entering 1 for yes and 9 for no.

If your self-employment involved working more than 40 hours in the week, you will be considered to be fully employed and not eligible for benefits.

Holiday: If you received, or are going to receive, holiday pay, enter that amount in the week in which the holiday occurs.

Bonus or Severance Pay: Report the amount of the lump sum payment in the week in which the payment is received. If you are to be paid more than one payment in severance pay from an employer, report an equal portion of the pay for each week claimed during the period covered by the payment. See page 17 for more information.

Vacation: If you received, or are going to receive, vacation pay, enter the amount for the week(s) you are actually on vacation. If your employer assigns vacation pay to certain weeks, report your vacation pay during those assigned weeks whether you take your vacation then or not. If you receive a lump-sum payment for unused vacation time, report that amount in the week in which the payment is received.

If you answer "Yes" to question 9, Tel-A-Claim continues on:

If you received \$100.45 in other income, press:

10045#

The system speaks back the amount you entered and asks you to confirm it by entering 1 for yes or 9 for no. Your unemployment may be reduced if you have other earnings. Please refer to page 17 for an explanation of this reduction.

TEL-A-CLAIM: HOW TO FILE A CLAIM BY PHONE

At the tone, speak the name of the employer followed by the pound key (#).

At the tone, speak the mailing address for the employer; include street, city, state and zip code, followed by the pound key (#).

At the tone, speak the last date worked for the employer; include month, day and year, followed by the pound key (#).

Remember that questions 1-6 allow you to correct a yes/no mistake. Those questions will be repeated for you and allow you to correct any mistakes. Questions 7-9 only allow you to correct a dollar amount mistake. If you answer questions 7-9 incorrectly, you will have to contact your local office to correct the mistake.

If you forget to call Tel-A-Claim for one week, and you wish to file for that week, report to your local office for information. The local office will gather information from you to determine if you can be paid for that week. Tel-A-Claim will allow you to skip one week of filing and still keep your claim open. However, **if you skip two weeks of filing, your claim will go inactive. You will have to reopen your claim. Refer to instructions on page 22.** You will also have to reopen your claim if you report two successive weeks of earnings over 1½ times your weekly benefit amount, in other words you earned too much money to receive unemployment insurance benefits during each of those two weeks. Idaho does NOT allow backdating to any prior week. **If you do not submit your weekly claim as instructed, you will be denied benefits for the period you are claiming.**

Claim information may be accessed online at cl.idaho.gov/iw. Click on the "Payment Summary" button. **Types of information you can access are:** 1) The date when your last check was issued, 2) The amount of the check, when it was mailed and deductions from the weekly benefit amount, 3) The balance remaining on your claim, 4) Information on the last week claimed to see if it was a waiting week, whether you had excessive earnings, exhausted benefits or have an eligibility issue pending.

If, for some reason, you cannot use the Internet Continued Claim or Tel-A-Claim reporting systems, this section explains how to file using the Continued Claim Report form. The Continued Claim Report form is a card which must be filled out by hand and either mailed or hand delivered to the local office. This card usually covers a two-week period so you are paid once every two weeks. There is always the chance a card can be lost or destroyed. Please consider these things, and if possible, use the Tel-A-Claim or Internet Continued Claim systems.

Your Continued Claim Report form will usually cover a two-week period. The first eligible week of your claim is the waiting week and not a payable week (see page 7). The first two lines contain pre-printed identification data such as your social security number and telephone number. Please change preprinted information if it is incorrect. The Week Ending Date for Week 1 and Week 2 is preprinted. For unemployment insurance purposes, a report period is one week, and week ending dates are always a Saturday. Each week starts at 12:01 a.m. on Sunday and ends at midnight the following Saturday.

Answer the questions for each week you are filing for by checking yes or no. The questions are very similar to the Tel-A-Claim questions explained in this book (pages 10-14). Questions 1-6 are the same as Tel-A-Claim. See explanation on pages 11-12. Explanations about earnings and other income are on pages 17-18. If you do work during the weeks for which you are filing, you must list the employer's name and address in the section which asks for the "WEEK 1 EMPLOYER" or "WEEK 2 EMPLOYER." In the part that asks for "Last day worked this week (Mo/Day/Yr)," list the last day you worked during the week for which you are filing. If you separate from an employer for other than lack of work, check the appropriate box that asks: "If you are no longer working for any of the above employers, for other than lack of work, mark the appropriate box." Be prepared to report to your local office with additional information on the separation if it has not already been provided.

You must mail or deliver to your local office a properly completed Continued Claim Report form that asks for payment or waiting week credit, for a specific one-week or two-week period. When you submit a Continued Claim Report form, another blank form is automatically mailed to your last known address. If you do not receive a new claim report in the mail, please contact your local office for another claim report.

Your Continued Claim Report must be postmarked by midnight on the 9th day following the week(s) being claimed (23rd in the example below).

Your Continued Claim Report must be placed in a receptacle for that purpose or handed to an authorized representative of Idaho Commerce & Labor by the 9th day following the last week(s) being claimed (23rd in the example below). A claim report cannot be accepted which has been deposited under or through the doors of your local office.

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Week 1							Week 2															
Card report would cover Week 1 and Week 2														Card should be delivered during this period.								

If you do not mail or deliver your Continued Claim Report as instructed, you will be denied benefits for the period you are claiming.

Please allow at least seven days from the date you submit your Continued Claim Report for delivery of any check. Calling before the seven days have passed will cause further delays in processing all mail. Do not assume benefits have been denied or that something is wrong because your check does not arrive on the same day each period. If you return to work on a full-time basis or for some other reason you wish to stop filing on your claim, you do not need to take any special action. Just stop sending in your Continued Claim Reports and your claim will automatically be inactivated.

Interstate Claimants — individuals not living in Idaho — must always mail Continued Claim Reports directly to the Interstate Unit in Boise. The address is: Interstate Claims, 317 W. Main St., Boise, Idaho 83735. If you do not live in Idaho, you may obtain a Continued Claim Report by calling the Interstate Claims Unit in Boise, Idaho, at (208) 332-3574.

If you work during the time you claim benefits, you may continue to receive some or all of your benefits depending on the number of hours you work and how much you earn. **Your gross earnings must be reported in the week earned, not the week paid.** The wages you earn during a week for which you claim benefits will affect your check in one of the following ways:

- 1) You can earn up to one half of your weekly benefit amount and still receive the full weekly benefit amount for that week. However, you must still report **all** amounts earned each week, even if gross earnings are less than half your weekly benefit check.

If your weekly benefit amount is \$100 and you earn \$47 in gross earnings, you will receive a check for \$100.

- 2) If you earn more than one half of your weekly benefit amount, you will receive a dollar-for-dollar reduction for every dollar you earn over one half of your weekly benefit amount for that week.

If your weekly benefit amount is \$100 and you earn \$85 in gross earnings, you have earned \$35 over one half of your weekly benefit, and you will receive a check for \$65 (\$100-\$35).

- 3) If you work full-time, or if you earn 1½ times your weekly benefit amount or more in gross earnings in one week, you will not receive a benefit check for that week. Full-time is generally considered 40 hours per week for most occupations. If you earn over 1½ times your weekly benefit amount for two consecutive weeks, you must reopen your claim during the third week if you wish to claim for that week.

If you worked full-time, or earned \$150 or more in gross earnings, and your weekly benefit amount was \$100, you would not receive a check for that week.

To qualify for these partial benefits, you must work all the hours available to you. Money reduced from your check is not "lost" but remains in your account for possible future use on your claim.

Earnings must be reported in the week in which you earn them. The information in this section covers the different types of earnings you may have and how to report them. If you have questions regarding how to report income or hours worked while on unemployment, contact your local office. The phone numbers are listed on page 26.

You must report your gross earnings during the week you earn them. You do **not** report the earnings in the week they are paid to you. If you work for an employer who uses a delayed payment system, keep track of your hours worked each week and multiply this by your hourly wage rate. This amount must be reported as earned during the week in question.

You must report all earnings regardless of their source. This includes earnings from self-employment as well as those earned in an employer-employee relationship. If you are involved in a self-employment venture, you should contact your local office for assistance in determining how to compute and report your earnings. See **page 13, question #8a** for more information.

Holiday pay is reportable for the week in which the holiday occurs. For bonus or severance pay, report the amount of the lump sum payment in the week in which the payment is received. If you are to receive more than one payment for severance pay from an employer, report an equal portion of pay for each week claimed during the period covered by the payment. For example, the total amount of your severance payment divided by the number of weeks in the period covered by that payment equals the amount you should report for each week you claim benefits.

Time spent in all services performed for an employer, commission work, self-employment and volunteer work.

If you contributed toward a retirement plan, the pension, annuity or retirement pay is not reportable income and is not deducted from your unemployment insurance benefits. Social Security retirement benefits are not deductible from unemployment insurance benefits because you contribute to that fund. **Retirement income** will be deducted from your weekly benefit amount if: 1) The payment is from a base period employer, and 2) the employer made 100 percent of the contributions to the retirement plan. Payments will be prorated on a weekly basis. **For every \$1 of your deductible weekly pension amount, your weekly benefit amount will be reduced by \$1.**

If you use the Internet Continued Claim or Tel-A-Claim system, your unemployment insurance check is issued weekly. If you are using the Continued Claim Reporting system, see page 16 regarding payment of checks.

Checks are issued as a result of your answers to the Internet Continued Claim, Tel-A-Claim system or the answers on your Continued Claim Report. If there are no problems on your claim, the check will be issued the next working day if your Internet Continued Claim or Tel-A-Claim report was filed before 6 p.m. Mountain time. If you are on the Continued Claim Report system, the check will go out in the mail the day after your Continued Claim Report is processed. Information on the Continued Claim Report system is on page 16.

Please allow up to a week to receive your check. If you do not receive a check within a week of your report, contact your local office listed on page 26.

Checks that have not been received in the mail will not be reissued until 14 days from the date of the original mailing. If you have received your check but it is now lost or stolen, contact your local office immediately. Your local office will assist you in filling out the forms for replacing lost checks.

The stub portion of your check may contain special messages concerning your claim. You may also receive other informational messages on the Continued Claim Report forms or in a letter in addition to the messages on your check. These messages will explain various situations such as why your check was reduced or not issued and provide information about the exhaustion of your benefits and benefit-year ending dates.

Read all correspondence carefully and ask a claim representative if you have any questions.

If you use the Tel-A-Claim or the Internet Continued Claim system and have questions regarding the status of your claim, you may call the Tel-A-Claim inquiry system by dialing your local office number, selecting option 7 and selecting inquiry at the prompt. If you are using the Continued Claim Report, you must contact your local office for information about your claim. All local offices and the Interstate Unit phone numbers are listed on page 26 in this handbook.

Benefits are paid to you based on the eligibility information available at the time you phone in your Tel-A-Claim report, submit your Internet Continued Claim report or turn in your Continued Claim report. An overpayment may occur if the Department receives additional or contradictory information relating to your eligibility after benefits have been paid to you. If, based on new information, the Department determines that you were ineligible for benefits you already received; you will be notified that an overpayment has been established on your claim. You will be required to pay back the overpayment in full with interest at the rate of 1½ times the statutory rate. A repayment plan may be arranged for large overpayments. If you have an existing overpayment balance when you are again eligible and file for benefits, your entire weekly entitlement will be retained by the Department each week and will be applied against your overpayment balance. Offsetting future benefits is only one of many methods used to recover current and past due overpayments. If overpayments are not promptly repaid, aggressive collection action may be taken. Overpayments due to fraud are not eligible for offset.

If you have been overpaid benefits, you may request that the Department issue a Determination of Waiver. The request must be in writing and made within 14 days of the date of mailing of the Determination of Overpayment. Repayment of the overpayment may be waived if you can show that you meet both criteria in example 1 OR both criteria in example 2.

Example 1: The overpayment must have been caused solely by Department error or inadvertence, AND made to a claimant who could not reasonably have been expected to recognize the error.

Example 2: The overpayment was a result of an employer misreporting wages earned in a claimant's base period, AND the claimant could not reasonably have been expected to recognize an error in the wages reported.

Instructions for requesting a Determination of Waiver are listed on the Determination of Overpayment that you will receive whenever an overpayment is established on your claim.

Engaging in any of the following acts is a felony crime in Idaho:

- 1) Making false statements while being interviewed regarding your claim.
- 2) Knowingly making a false statement on any of the forms or pages you fill out in relation to your claim such as misstating the reason for separation from your employer.
- 3) Failing to properly report any material fact or making a false statement when filing weekly via Tel-A-Claim, Internet Continued Claim or bi-weekly using the Continued Claim Report form;
- 4) Failing to notify the Department when you quit or are discharged from work or when you refuse work.
- 5) Failing to look for work when required to do so, but telling Idaho Commerce & Labor you did look.

Audits are routinely conducted to verify the information you provide Idaho Commerce & Labor while filing for unemployment insurance benefits. It is critical that you promptly respond to these audit requests. Failure to do so or failure to explain adequately any discrepancies noted could result in an unemployment insurance fraud decision and an overpayment. If such a decision is issued, you will be required to repay the overpayment along with a penalty and interest. You will also be disqualified from receiving unemployment benefits for the longer of one year or until you have repaid the overpayment, penalty and interest in full. You may also be criminally prosecuted.

Collecting Unemployment Insurance Benefits?

Avoid the Pitfalls that Lead to Fraud

Unemployment insurance fraud is a growing problem. In 2004 more than \$4 million in unemployment insurance payments were paid to claimants who were defrauding Idaho's system. A new tracking system is in place to identify and catch individuals who commit fraud. Stiffer penalties take effect starting July 1, 2005. Avoid these penalties, interest, and potential prosecution by knowing what activities are considered fraud.

- **Misrepresenting work search efforts while receiving benefits.** You must actively look for work and report your efforts each week. Actively seeking work means you must contact employers who hire people with your jobs skills. If you can't find a position with those skills you must expand your search and look for other work you can do. You must also be willing to accept part-time work while waiting for full-time work.
- **Not accurately reporting weekly earnings while drawing benefits.** If you obtain temporary or part-time employment while accepting unemployment insurance benefits you must report the wages earned each week so your unemployment insurance benefits can be adjusted accordingly.
- **Continuing to receive benefits after returning to full time work.** Once you return to work full-time you are no longer eligible to collect benefits. Continuing to collect benefits could lead to monetary penalties and criminal prosecution.
- **Misrepresenting ability and availability while receiving benefits.** You must be willing and able to accept both full and part-time work in your field of expertise. Putting limits on the shifts, days or distance you will travel for work can make you ineligible for benefits. If you cannot work because of an illness, injury or some other physical or mental conditions, contact your local Commerce & Labor office.
- **Stealing someone's identity to receive benefits.** Stealing someone else's identity to collect benefits is a felony that will subject you to criminal prosecution.
- **Collecting benefits while on vacation.** A weekly benefit check should not be seen as an easy way to fund a trip you've always wanted to take. If you leave the area for a non-vacation reason while collecting benefits you must continue to look for work and report your efforts. If you do take a vacation you must report that on your weekly claim as not being available for that week, and you will not be paid benefits during that time period.
- **Helping someone else file a fraudulent claim.** Assisting any individual in defrauding the unemployment insurance system will subject you to the same financial penalties and potential prosecution of the person caught defrauding the system.
- **Failure to notify Idaho Commerce & Labor when you refuse, quit or are discharged from a job while drawing benefits.** You must notify your nearest Idaho Commerce & Labor office if you refuse a job, quit or are discharged from a job while drawing unemployment insurance benefits so a determination of eligibility can be made.

REPORT FRAUD: If you know of someone who is defrauding the system you can report it anonymously by calling 1-800-672-5627. Fraud can also be reported on the Commerce & Labor Web site at cl.idaho.gov by clicking on the unemployment insurance link.

Last year more than 1,700 people tried to work the unemployment system illegally in Idaho.

In the recent past two Magic Valley residents were placed on probation after pleading guilty to fraudulently collecting unemployment insurance benefits.

And a new law going into effect this summer will help catch more cases of unemployment fraud, a state investigator says.

The two Magic Valley residents were sentenced separately on felony charges of "misrepresentation to obtain benefits," an Idaho Department of Commerce & Labor news release says.

Fraud is defined as willfully withholding information to draw benefits, said the unemployment insurance administrator in Boise. Fraud would occur in the case of a person who was fired or quit a job reports to the state they were laid off or lost the work through no fault of their own.

Just lately, I had an encounter with the employment office that wasn't very pleasant.

See I thought that while I was working I would try and collect a few unemployment checks for a little extra income. Don't get me wrong, I needed the money, but I guess we all do.

But, I found out that was not the way to go. Besides getting caught, they took me to court. So, it ended up that I had to pay the money back plus I had a pretty good size fine to pay and I ended up having to write this embarrassing letter to the newspaper.

So what I have to say is and what I have learned is that they keep things on record, and if you think you can get away with it, think twice because sooner or later, they will get you.

And you might be put in the same situation or maybe even worse. So the message I give to you is don't do it. You're better off.

A Rigby Claimant

A Blackfoot man who said when he illegally drew unemployment compensation to the sum of \$2,310 he didn't know it was a crime, was sentenced Monday to two to five years in prison.

A fraud investigation by officials from the Idaho Department of Commerce & Labor led to a guilty plea by an Emmett man for illegally collecting unemployment insurance benefits from the state.

The Emmett resident pled guilty before Idaho Judicial District Court to felony charges of "misrepresentation to obtain benefits."

The individual was found to have concealed weekly earnings while receiving unemployment benefits and failing to report voluntarily quitting a job during the time benefits were being filed.

The Emmett resident was sentenced to 180 days in the Gem County jail with 170 days suspended and one-year probation. The individual was required to pay court costs of \$500 and to make restitution to the state Department of Commerce & Labor in the amount of \$2,439.

Compiled by Statesman staff

A Kingston man recently pled guilty in First District Court to illegally receiving unemployment insurance benefits.

Following an investigation by officials from the Idaho Department of Commerce & Labor, the Kingston man entered the plea in Wallace.

According to the Department, the claimant intentionally failed to report weekly earnings while at the same time receiving unemployment benefits for a period of 13 weeks.

The First District Court Judge sentenced the Kingston man to 127 days in jail. In addition, he was ordered to pay court costs and will have to make restitution to the Idaho Department of Commerce & Labor for the unemployment benefits the man received which totaled \$2,904.

Department officials said they actively pursue criminal prosecution of individuals who file fraudulent claims for unemployment benefits. They said such claims raise employer tax rates and reduce the funds available for paying benefits in legitimate cases.

The state has unemployment insurance investigators who devote their time to investigating fraudulent claims.

You or a current or previous employer may protest any decision regarding your eligibility to receive unemployment insurance benefits. Your protest must be in writing and be signed. When a protest is filed and a new decision is reached, a written document will be issued telling you the reasons for the new decision. There are four decision-making levels. Decisions made at the first three levels may be protested by you or by an interested party.

The determination is the first decision made regarding your claim and is issued by Idaho Commerce & Labor, using the facts gathered by the local office.

The Appeals Bureau in the Idaho Commerce & Labor central office in Boise makes this decision. The Appeals Bureau may use some previously submitted information and will gather information, via sworn testimony, at the hearing. Interested parties participate in the hearings via telephone. Failure to participate in the hearing may result in the decision going against you.

This is the first appellate stage outside Idaho Commerce & Labor. Your protest to an Appeals Bureau decision must be in writing and must be mailed directly to the Industrial Commission. The Commission typically issues a decision based on the facts previously submitted.

The last appellate level for protesting unemployment insurance claim decisions takes place before the Idaho Supreme Court. Fees may be charged for filing a protest at this level.

If you file a protest or appeal:

Determination: A protest must be delivered to your local office or be postmarked no later than 14 days after the decision is mailed.

Appeal: You have 14 days from the date of mailing to file a written protest with the Idaho Industrial Commission. The protest must be taken or mailed directly to the Industrial Commission. Protests filed with the Appeals Bureau or a local office will not be accepted by the Commission.

Industrial Commission: You have 42 days from the date of the decision to appeal to the Idaho Supreme Court. Contact the Industrial Commission to obtain detailed instructions for appealing their decision.

At the first two levels of protest, you may represent yourself or be represented by an attorney or any adult of your choosing. At the Industrial Commission a claimant may represent himself or be represented by an attorney or any duly-authorized agent.

You should continue to file through Tel-A-Claim, Internet Continued Claim or your Continued Claim Report forms until you accept a final decision. You can only be paid for weeks for which you have filed a claim and have met all the eligibility requirements if a higher appeal authority determines that you should receive benefits.

If you have not claimed benefits for two or more consecutive weeks or have earned over 1½ times your weekly benefit amount for two consecutive weeks, your claim is automatically stopped. **To re-open your claim, go to cl.idaho.gov/iw.** If you do not have Internet access, please visit the Idaho Commerce & Labor office nearest you. The list is on page 26. Your claim is open the Sunday of the week in which you reopen your claim. **Do not wait until the week is over before reopening your claim. Idaho does not allow backdating the claim effective date.** If you have worked since last filing, be sure to have a complete list of accurate addresses of your employers.

If you move, please go to cl.idaho.gov/iw on the Internet or visit the local office nearest you to update your mailing address or to reopen your claim. Your work-seeking requirements may change if you move to a different area. If you are living outside Idaho and you move, contact the Interstate Claims Unit at (208) 332-3574 to update your address if you do not have Internet access.

This process identifies claimants who will be likely to exhaust regular unemployment insurance and will need job-search assistance services to make a successful transition to new employment. If your circumstances are such that you are selected through this "profiling" process, your eligibility for benefits can be affected if you do not follow through with this program. You and a local office representative develop the program. It is designed to help you return to work in the shortest possible time.

Any unemployment benefits you receive are fully taxable, provided you are required to file a tax return. You can elect to have federal taxes withheld from your unemployment insurance check. The withholding rate is 10 percent. Idaho state taxes will not be withheld. It may be necessary for you to make estimated tax payments. Form 1099-G, which reports benefits paid, will be mailed at the end of January to your last address on record. The IRS will be given the same information. If you have moved, be sure to update your mailing address.

Public Law 97-35 requires us to withhold funds from unemployment insurance benefits in cases where a child support enforcement agency is enforcing either a voluntary support agreement or a court order to pay money for child support. The Department of Health and Welfare enters information directly into the unemployment insurance system. **Any questions regarding child support enforcement deductions must be directed to the Department of Health and Welfare, Child Support Services, at its toll-free number of 1-800-356-9868.**

Trade Adjustment Assistance is available to workers who lose their jobs, or whose hours of work and wages are reduced because of increased imports. Benefits available to eligible individuals may include: 1) job training, if suitable employment is not available, 2) job search allowances to cover expenses when looking for work outside the area, 3) relocation allowances to help workers and their families move to a new area of employment, plus a lump sum payment and 4) trade readjustment allowance, which becomes payable when all unemployment insurance benefits have been exhausted. Forms and additional information can be obtained from your local office.

Workers unemployed due to plant closures, permanent layoffs or other long-term unemployed workers may be eligible for reemployment and retraining services under the Economic Dislocation and Worker Adjustment Assistance Act. Services may include, but are not limited to: counseling, testing, vocational guidance, placement assistance, on-the-job training, vocational classroom training and relocation assistance. Contact the nearest local office for more information to see if you qualify for these services.

You must keep a detailed record of your work search. Idaho Commerce & Labor may require you to provide this information either in-person or via the Internet. Failure to provide this information when requested will result in your benefits being stopped. The contacts you list will be verified with the employers you show you checked with for available work. Falsifying work search contacts will result in a determination of fraud. Use the forms on pages 24-25 to record your work search activities.

Claimant's Name:

Social Security Number:

	Place Contacted (Employer name, address and phone number)	Type of work sought	Date of contact and method of applying	Name of person you contacted	Possibility of hire
Week ending	1.				
	2.				
	3.				
Week ending	1.				
	2.				
	3.				
Week ending	1.				
	2.				
	3.				
Week ending	1.				
	2.				
	3.				
Week ending	1.				
	2.				
	3.				

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Name:

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	2.				
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Week ending	1.				
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Week ending	1.				
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Week ending	1.				
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Week ending	1.				
	2.				
	3.				
Week ending	1.				
	2.				
	3.				

Blackfoot	155 N. Maple	PO Box 9, Blackfoot	83221-0009	236-6713
Blaine County	513 N. Main Street, Ste 1	513 N. Main Street, Ste 1, Hailey	83333-8417	788-3526
Boise	219 W. Main St.	219 W. Main St., Boise	83735-0030	332-3575
Bonn timers Ferry	6541 Main St.	Rt. 4 Box 5745, Bonners Ferry	83805-8521	267-5581
Canyon County	6107 Graye Lane	6107 Graye Lane, Caldwell	83607-8072	364-7781
Coeur d'Alene	1221 W. Ironwood Dr., Ste 200	1221 W. Ironwood Dr., Ste 200, CDA	83814-2668	769-1558
Emmett	2030 S. Washington	2030 S. Washington, Emmett	83617-9450	364-7780
Grangeville	305 N. State St.	PO Box 550, Grangeville	83530-0550	983-0440
Idaho Falls	150 Shoup Ave, Ste 13	150 Shoup Ave, Ste 13, Idaho Falls	83402-3653	557-2500
Interstate Claims	317 W. Main St.	317 W. Main St., Boise	83735-0770	332-3574
Lewiston	1158 Idaho St.	PO Box 1147, Lewiston	83501-1147	799-5000
Magic Valley	771 N. College Rd.	PO Box 5129, Twin Falls	83303-5129	735-2500
McCall	299 S. 3 rd St.	PO Box 966, McCall	83638-0966	634-7102
Meridian	205 E. Watertower Ln.	205 E. Watertower Ln., Meridian	83642-6282	364-7785
Mini Cassia	127 W. 5 th St. North	127 W. 5 th St. North, Burley	83318-3457	678-5518
Moscow	1350 Troy Rd. Ste 1	1350 Troy Rd. Ste 1, Moscow	83843-3995	882-7571
Mountain Home	1993 E. 8 th N.	1993 E. 8 th N., Mtn. Home	83647-2333	364-7788
Orofino	410 Johnson Ave.	PO Box 391, Orofino	83544-0391	476-5506
Payette	501 N. 16 th St., Ste 107	PO Box 179, Payette	83661-0179	642-9361
Pocatello	430 N. 5 th Ave.	PO Box 4087, Pocatello	83205-4087	236-6710
Rexburg	1133 Stocks Ave.	PO Box 158, Rexburg	83440-0158	557-2501
St. Maries	105 N. 8 th	105 N. 8 th , St. Maries	83861-1845	245-2518
Salmon	1301 Main St., Unit 1	PO Box 990, Salmon	83467-0990	756-2234
Sandpoint	2101 W. Pine St.	2101 W. Pine St., Sandpoint	83864-9399	263-7544
Silver Valley	35 Wildcat Way, Ste B	35 Wildcat Way, Ste B, Kellogg	83837-2253	783-1202

Claimants requiring TDD Service call the Idaho Relay Service at: 711

Our Internet claim filing page is at cl.idaho.gov/iw. Use it to open a new claim, reopen your existing claim or file your weekly claim.

To check on available jobs, labor market or other helpful information go to cl.idaho.gov.

State of Idaho
Idaho Commerce & Labor
Unemployment Insurance Division
317 W. Main Street
Boise, Idaho 83735-0770
Official Business
Penalty for Private Use, \$300

I-77-506 (R-7-05)

FIRST CLASS MAIL

